IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
****
ORDER

LRs of Himmat Singh & Ors. vs. State of Rajasthan & Ors

S. B. CIVIL WRIT PETITION NO.759/1996 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Date of Order : 3rd October, 2007.

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.LR Mehta, for the petitioners.
Mrs. RR Kanar, Dy.GA, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

This writ petition has been filed against the order of the Board of Revenue Dated 22nd July, 1995 (Annex.6) by which the learned Board of Revenue, Ajmer set aside the order of the Revenue Appellate Authority, Udaipur dated 28.2.1995.

Brief facts of the case are that ceiling proceedings were

initiated against one Bheru Singh (now deceased) under the provisions of Chapter IIIB of the Rajasthan Tenancy Act, 1956, which is known as Old Ceiling Law. In the said proceedings, the SDO , Udaipur by order dated 4th Nov., 1971 declared 180.36 standard acres of agricultural land in excess in the hands of said Shri Bheru Singh. Shri Bheru Singh preferred appeal against the order dated 4th Nov., 1971 before the Revenue Appellate Authority, Udaipur which was partly allowed by order dated 9th March, 1972 and matter was remanded to the SDO with the direction to the SDO to give recognition to the transfers made to other persons other than the members of the family of the assessee Bheru Singh. The Revenue Appellate Authority further directed the SDO to inquire about the family members of Bheru Singh on specific issue whether the family members of Bheru Singh are family members of Bheru Singh as per the definition of 'family' given in the provisions of the Old Ceiling Act. After remand, the SDO vide order dated 2nd Dec., 1982 declared that Bheru Singh is entitled to hold 208 bighas 17 biswas land equivalent to 111 acres of land which comes to 52.67 standard acres. The rest of the land measuring 92.09 standard acres required to be resumed under the provisions of the Old Ceiling Act. Before the SDO a specific point was raised that the land in question is ancestral land of all the sons, daughter and wife of

Bheru Singh who are the coparceners and have share in the property by birth. It is also stated that they are not dependent upon Bheru Singh and therefore, they constituted separate unit and are cannot be treated to be family member of Bheru Singh for the purpose of assessing the land of Bheru Singh under Ceiling Law. It will be worthwhile to mention here that according to the petitioners even on 29th Sept., 1971 an application was submitted before the SDO under Section 30B of the Old Ceiling Law stating therein that the property in question is ancestral property and the decedents of Bheru Singh are co-sharer in the property. According to petitioners that application was not considered initially when the learned SDO passed the order dated 4th Nov., 19971 but in view of the fact that appellate court remanded the matter to the SDO by order dated 9th March, 1972 then the issue became open as in the remand order, the appellate court directed SDO to examine the number of family members of the petitioners and to find out how many members of Bheru Singh are covered under the definition of the family given.

It will be worthwhile to mention here that one of the son of Bheru Singh, Vikaram Singh submitted an application under Order 1 Rule 10 CPC before the SDO, Udaipur for becoming

party on the ground that he is co-sharer (coparcener in the property in dispute) and is not dependent upon Bheru Singh. His property may be excluded from the assessment of land in the hands of Bheru Singh. Said application of Vikaram Singh was dismissed by the SDO in its final order dated 2nd Dec., 1982 on the ground that in ceiling proceedings complicated questions of law of succession cannot be decided and once the land is recorded in revenue record in the name of one person and that has not been challenged by his sons by claiming that they are co-sharer then in ceiling proceedings they cannot submit that they are co-sharer in the property.

Being aggrieved against the order of the SDO, Udaipur dated 2nd Dec., 1982, Bheru Singh preferred an appeal before the Revenue Appellate Authority, Udaipur. The Revenue Appellate Authority vide order dated 28.2.1985 held that in view of the judgment of this Court reported in RLR 1983 916 and the judgment of the Hon'ble Supreme Court reported in AIR 1968 SC 1129, the matter is required to be remanded to the SDO again for finding out whether the decedents of Bheru Singh are dependent upon Bheru Singh or not because the property in question is claimed to be coparcenery property.

The order of the Revenue Appellate Authority, Udaipur dated 28th March, 1985 was challenged by the State Government by preferring revision petition before the Board of Revenue, Ajmer. The learned Board of Revenue, Ajmer vide order dated 22nd July, 1995 allowed the revision petition only on the ground that since the SDO initially passed the order on 4th Nov., 1972 and matter was remanded to the SDO for limited inquiry then in that inquiry, new point about the property in question being coparcenery and exclusion of share of decedents of Bheru Singh could not have been raised and, therefore, the Revenue Appellate Authority committed error of law in remanding the matter back to the SDO vide order dated 28.2.1985 for holding inquiry about the new question of fact. The order of the Board of Revenue dated 22nd July, 1995 was challenged initially by filing the review petition, which was dismissed by the Board of Revenue vide order dated 17.1.1996 then by filing this writ petition.

Learned counsel for the petitioners vehemently submitted that the issue that the property in question is ancestral and in ancestral property children gets right with their birth. They becomes co-sharer from the time of their birth and are owner of the property to the extent of their share. This fact that sons and

daughters of Bheru Singh are the co-sharers in the property, was brought on record before the learned SDO in earlier proceedings as back as on 29th Sept., 1971 by submitting application by the deceased Bheru Singh himself. This issue was agitated by the assessee Bheru Singh even before the first appellate court i.e, the Revenue Appellate Authority, Udaipur which is apparent from the order of the Revenue Appellate Authority dated 9th March, 1972. The Revenue Appellate Authority remanded the mater to the SDO for the purpose of deciding the issue of family members of Bheru Singh, therefore, it cannot be said that Bheru Singh or his successor for the first time raised question of property being ancestral and coparcenery property and that the decedents of Bheru Singh acquired their rights in the property by birth as well as that they are not dependent upon Bheru Singh. The Board of Revenue committed serious error of law in setting aside the order of remand passed by the Revenue Appellate Authority dated 28.2.1985 merely on assumption that the issue of family members of Bheru Singh has been raised first time after remand.

Learned counsel for the respondents vehemently submitted that the first contention of Vikaram Singh as well as

Bheru Singh was that Bheru Singh transferred the property by registered sale deed to his family members or the property was given in partition to some of the family members then that is a stand contradictory to the stand taken by the petitioner that they are co-sharers in the property in dispute. It is also submitted that in first order of SDO dated 4th Nov., 1971 there is no mention of any plea of Bheru Singh that the property was coparcenery property or it was ancestral property. It is also submitted that Vikaram Singh was not necessary party nor he could have been impleaded as party in the ceiling proceedings initiated against his father Bheru Singh.

I considered the submissions of learned counsel for the parties and perused the record.

It is not in dispute that Bheru Singh before learned SDO, in original ceiling proceedings itself submitted application on 29th Sept., 1971 and took the stand that the property is ancestral. A bare perusal of the order of remand dated 9th March, 1972 clearly reveals that before the SDO in original proceedings itself as well as before appellate court, issue was raised by the assessee Bheru Singh in relation to determination of his family members as per the legal definition of family and, therefore, the

Revenue Appellate Authority in its assessment order dated 9th March, 1972 specifically directed learned SDO to record finding about the persons who are falling in the definition of family as given under the provisions of the Old Ceiling Act. The definition of family is as under:-

> "*(a) "family" shall mean a family consisting of a husband and wife, their children and grand-children being dependent on them and the widowed mother of the husband so dependent, and"*

The definition says that family including the persons having relation with assessee as mentioned in the definition as well as must be dependent upon the assessee. The learned SDO after remand, rejected the contention of the assessee only on the ground that complicated question of law cannot be decided in ceiling proceedings and on the ground that once the decedents having not challenged the revenue entries recorded in the name of Bheru Singh in time then they cannot challenge the entry in ceiling proceedings. Therefore, the issue was decided by the SDO on assumption that in ceiling proceedings, complicated questions of law cannot be decided. This proposition as such cannot be accepted because firstly it was not even a question of law much less to complicated question of law and secondly one cannot be deprived from his property with the help of such plea.

Without deciding the right of the party in accordance with law no one can be deprived from his property. In the ceiling proceedings, the State is required to examine whether the land in the hands of the assessee is in excess to ceiling limit or not and in the facts of the case,the Revenue Appellate Authority rightly remanded the matter to the SDO in the light of the decisions referred in the order dated 28.2.1985 and the Board of Revenue committed error of law when Board of Revenue held that the issue raised by the petitioners was a new issue and was not raised originally.

In view of the above reasons, the writ petition deserves to be allowed, hence allowed. The order of the Board of Revenue dated 22nd July, 1995 is set aside and quashed. Since the matter was remanded to the SDO, Udaipur for deciding the ceiling case in the light of the earlier order, therefore, both the parties are directed to appear before the SDO,Udaipur on 30th Oct., 2007.

(PRAKASH TATIA), J.

c.p.goyal/-